

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 97-4017

United States of America,

Appellee,

v.

John Luther Session,

Appellant.

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* Appeal from the United States

* District Court for the

* Southern District of Iowa.

* [UNPUBLISHED]

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Submitted: October 7, 1998

Filed: October 16, 1998

Before WOLLMAN, BRIGHT, and HANSEN, Circuit Judges.

PER CURIAM.

A jury found John Luther Session guilty of conspiring to distribute cocaine base, and of distributing and aiding and abetting the distribution of cocaine base on March 7 and 11, 1997, in violation of 18 U.S.C. § 2 and 21 U.S.C. § 841(a)(1), (b)(1)(B). Session withdrew post-trial motions for judgment of acquittal and for mistrial in exchange for the government's stipulation to a three-level acceptance-of-responsibility reduction for sentencing purposes. At sentencing, Session objected to the presentence report's drug-quantity calculation and testified on his own behalf that he had delivered no more than 3 grams of cocaine base on March 11 and was not involved in the March

7 transaction. The district court¹ found that even without the March 7 amount, Session was responsible for more than 5 grams of cocaine base, as the laboratory report, which the court found to be credible, stated that the amount delivered on March 11 was 7.61 grams. Taking into account Session's prior drug-distribution conviction, the court sentenced him to the statutory minimum of 120 months' imprisonment and 8 years' supervised release. Appellate counsel moved to withdraw pursuant to Anders v. California, 386 U.S. 738 (1967), and Session did not file a pro se supplemental brief.

The only issue raised on appeal is whether trial counsel was ineffective for failing to conduct any testing or examination of the alleged controlled substance. We conclude that this claim would be more appropriately addressed in a 28 U.S.C. § 2255 proceeding, in which a record can be fully developed. See United States v. Mitchell, 136 F.3d 1192, 1193 (8th Cir. 1998).

Upon review of the record in accordance with Penson v. Ohio, 488 U.S. 75, 80 (1988), we find no nonfrivolous issues. Accordingly, the judgment is affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

¹The Honorable Donald E. O'Brien, United States District Judge for the Northern District of Iowa.